ORIGINAL

Supreme Court, U.S.
FILED
NOV 29 2000
CLERK

No. 00-750

IN THE
SUPREME COURT OF THE UNITED STATES

JANET RENO, ET AL.,

Petitioners,

v.

SOUNBOON SRIMEUANGSAM,

Respondent.

MOTION FOR LEAVE TO PROCEED
IN FORMA PAUPERIS

The Respondent Sounboon Srimeuangsam, pursuant to Supreme Court Rule 39 and 18 U.S.C. § 3006A(d)(7), asks leave to file his Response by Respondent to Petition for Writ of *Certiorari* to the United States Supreme Court without prepayment of costs, and to proceed *in forma pauperis*.

On May 7, 1999, the Federal Public Defender for the Western District of Washington was appointed by the United States District Court for the Western

13 pp

District of Washington to represent Sounboon Srimeuangsam in the underlying civil case and on appeal to the Ninth Circuit Court of Appeals. This appointment was made pursuant to 18 U.S.C. § 3006A(a)(2)(B). Leave to proceed *in forma pauperis* has not been sought in any other court.

At the time of the appointment, Mr. Srimeuangsam had no assets or money. Mr. Srimeuangsam was detained by the Immigration and Naturalization Service throughout the proceedings in the district court. Since his release on October 20, 1999, Mr. Srimeuangsam has resided with his brother in Everett, Washington. He continues to be indigent and unable to finance the costs of this opposition to petition for writ of *certiorari*.

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WHEREFORE, the respondent, by and through the undersigned, respectfully prays for leave to proceed in the Supreme Court of the United States *in forma pauperis*.

DATED this 28nd day of November, 2000.

Respectfully submitted,

Jennifer E. Wellman
Assistant Federal Public Defender
Counsel of Record

Jay W. Stansell
Assistant Federal Public Defender

Federal Public Defender's Office
Western District of Washington
1111 Third Avenue, Suite 1100
Seattle, WA 98101
(206) 553-1100

Attorneys for Respondent Sounboon Srimeuangsam

No. 00-750

In The Supreme Court of the United States

JANET RENO, Attorney General of the United States; ROBERT S. COLEMAN, JR., District Director of the Immigration and Naturalization Service, Seattle; and the UNITED STATES IMMIGRATION AND NATURALIZATION SERVICE, *Petitioners*

v.

SOUNBOON SRIMEUANGSAM, *Respondent*

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

RESPONSE BY RESPONDENT TO PETITION FOR A WRIT OF *CERTIORARI*

THOMAS W. HILLIER, II
Federal Public Defender
for the Western District of Washington

JAY W. STANSELL
Assistant Federal Public Defender

JENNIFER E. WELLMAN
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TABLE OF CONTENTS

QUESTIONS PRESENTED FOR REVIEW ..... (i)

TABLE OF AUTHORITIES ..... (ii)

OPINIONS BELOW 1

STATUTORY, REGULATORY AND CONSTITUTIONAL PROVISIONS INVOLVED IN THE CASE 1

STATEMENT 2

ARGUMENT 2

CONCLUSION 3

TABLE OF AUTHORITIES

Cases — Page

Ma v. Reno, 208 F.3d 815 (9th Cir.), *pet. reh'g denied* (June 2, 2000), *cert. granted*, 121 S.Ct. 297, 69 USLW 3086 (U.S. Oct. 10, 2000) (No. 00-38) 2

Zadvydas v. Underdown, 185 F.3d 279 (5th Cir. 1999), *cert. granted*, 121 S.Ct. 297, 69 USLW 3249, 69 USLW 3257 (U.S. Oct. 10, 2000) (No. 99-7791) 2

Constitution and Statutes

U.S. Const. amend. V 1

8 C.F.R. § 241.4 1

8 U.S.C. § 1231(a)(3) 1

8 U.S.C. § 1231(a)(6) 1

8 U.S.C. § 1253(b) 1

QUESTION PRESENTED FOR REVIEW

Whether, under 8 U.S.C. § 1231(a)(6), the Attorney General has the statutory authority to indefinitely detain a long-time resident alien of the United States beyond the 90-day removal period even if the deportation order cannot be effectuated in the reasonably foreseeable future.

Whether, if the Attorney General has the statutory authority to detain a long-time resident alien of the United States without time limitation under 8 U.S.C. § 1231(a)(6), that provision violates Sounboon Srimeuangsam's Fifth Amendment Due Process rights because his deportation cannot be effectuated in the reasonably foreseeable future and, even if his deportation was foreseeable, he is not a danger to the community or a flight risk.

IN THE SUPREME COURT OF THE UNITED STATES

No. 00-750

JANET RENO, et al., *Petitioners*
v.
SOUNBOON SRIMEUANGSAM, *Respondent*

ON PETITION FOR A WRIT OF CERTIORARI
TO THE UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

RESPONSE BY RESPONDENT TO PETITION FOR A
WRIT OF *CERTIORARI*

OPINIONS BELOW

The petition for *certiorari* correctly cites to the unreported district court and Court of Appeals opinions below. App. A, B & C to Pet. for Cert. 1a-16a. The district court order denying the government's motion to stay Mr. Lim's release pending their appeal to the Ninth Circuit is not reported. App. A, *infra,* 1a.

STATUTORY, REGULATORY AND CONSTITUTIONAL PROVISIONS INVOLVED IN THE CASE

The petition for *certiorari* correctly cites the statutory and regulatory provisions involved in the case, 8 U.S.C. § 1231(a)(6), 8 C.F.R. §241.4, and § 1231(a)(3). The additional statutory provision governing Mr. Srimeuangsam's release is 8 U.S.C. § 1253(b) which provides:

> An alien who shall willfully fail to comply with regulations or requirements issued pursuant to section 1231(a)(3) of this title or knowingly give false information in response to an inquiry under such section shall be fined not more than $1,000 or imprisoned for not more than one year, or both.

The constitutional provision involved is the Fifth Amendment Due Process Clause which

provides, in relevant part: "No person shall . . . be deprived of life, liberty or property, without due process of law[.]"

STATEMENT

The lower court opinions correctly set forth the facts of the case and the procedural background. Pet. for Cert. 1a-7a.

By writ of habeas corpus, Mr. Srimeuangsam challenged on statutory and federal constitutional grounds his ongoing detention by the INS because his deportation order cannot be effectuated in the reasonably foreseeable future, if ever. Both of the lower courts ruled in Mr. Srimeuangsam's favor. The Court of Appeals affirmed the grant of Mr. Srimeuangsam's writ of habeas corpus based on the circuit's decision in *Ma v. Reno,* 208 F.3d 815 (9th Cir.), *pet. reh'g denied* (June 2, 2000), *cert. granted,* 121 S.Ct. 297, 69 USLW 3086 (U.S. Oct. 10, 2000) (No. 00-38). In light of the grant of *certiorari* in *Ma*, Mr. Srimeuangsam waives his right to file a Brief in Opposition. Mr. Srimeuangsam does not thereby waive any objections to the government's recitation of the facts which are either inaccurately stated in, or omitted from, the petition for *certiorari.*

ARGUMENT

The questions presented by this case are whether the Attorney General has the statutory authority to detain a long-time resident alien of the United States whose deportation order cannot be effectuated in the reasonably foreseeable future, if ever, and if so, whether that detention runs afoul of Mr. Srimeuangsam's substantive due process rights under the Fifth Amendment of the United States Constitution. These same issues are presented in *Ma v. Reno,* 208 F.3d 815, and *Zadvydas v. Underdown,* 185 F.3d 279 (5th Cir. 1999), *cert. granted,* 121 S.Ct. 297, 69 USLW 324, 69 USLW 3257 (U.S. Oct. 10, 2000) (No. 99-7791), in which the Court granted *certiorari*

review on October 10, 2000.

Accordingly, Mr. Srimeuangsam does not waive any objections to the government's recitation of the proper legal analysis in Mr. Srimeuangsam's case. He nevertheless agrees with the government that consideration of the government's petition in this case should be held pending the Court's decision in *Ma* and *Zadvydas*.

CONCLUSION

The government's petition for *certiorari* should be held pending this Court's decision in *Reno v. Ma*, No. 00-38, and *Zadvydas v. Underdown*, No. 99-7791, and then disposed of as appropriate in light of the decisions in those cases.

Respectfully submitted,

Jennifer E. Wellman
Assistant Federal Public Defender
Counsel of Record

Jay W. Stansell
Assistant Federal Public Defender

Thomas W. Hillier, II
Federal Public Defender for the
Western District of Washington

Counsel for Respondent, Sounboon Srimeuangsam

November 28, 2000

APPENDIX A

OCT 2 8 1999

FILED 10/27 ENTERED
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OCT 28 1999
AT SEATTLE
CLERK U.S. DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
BY DEPUTY

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

SOUNBOON SRIMEUANGSAM,

Petitioner,

v.

JANET RENO, Attorney General, et al.,

Respondents.

No. C99-673Z
INS No. A27 741 966

ORDER

cc: Crnl, TSZ, JLW

This matter comes before the Court upon Respondents' motion for relief from order, or, alternatively, to alter or amend this Court's order, dated October 20, 1999. The Court has reviewed Respondents' motion, docket no. 23, Petitioner's opposition, docket no. 24 and Respondents' reply, docket no. 26. The Court treats Respondents' pleadings as objections to the Report and Recommendation of the Honorable John L. Weinberg, docket no. 21, which found "there is no realistic chance that the government will effectuate petitioner's deportation to Laos" and that "petitioner's continued detention violates his substantive due process rights as a matter of law." Report and Recommendation, docket no. 21, at 8. In addition, the Magistrate Judge found that even if the Court were to balance the government's interest in detention against the dangerousness and flight risk presented, "the balance still tips sharply in favor of petitioner's release." Report and Recommendation, docket no. 21, at 8-9. The Court adopted these findings in the order of October 20, 1999.

Nothing presented by the government in their motion to alter or amend alters the well reasoned Report and Recommendation of the Magistrate Judge. There exists no realistic

27

10/29/99 FRI 16:24 [TX/RX NO 5195]

chance that petitioner can be deported to Laos within the reasonable future and no balancing of the government's regulatory interests is required. Phan v. Reno, 56 F.Supp.2d 1149, 1156 (W.D. Wash. 1999). Further, even if a balancing of interests were required, continued detention of petitioner would violate his substantive due process rights under the facts of this case.

Accordingly, the Court DENIES Respondents' motion for relief from order, or, alternatively, to alter or amend this Courts order of October 20, 1999.

IT IS SO ORDERED.

DATED this 28th day of October, 1999.

Thomas S Zilly

THOMAS S. ZILLY
UNITED STATES DISTRICT JUDGE

10/29/99 FRI 16:24 [TX/RX NO 5195]

FEDERAL PUBLIC DEFENDER
Western District of Washington

November 28, 2000

VIA FEDERAL EXPRESS

The Honorable William K. Suter
Clerk of the Court
Supreme Court of the United States
1 First Street, N.E.
Washington, D.C. 20543

Re: *Janet Reno, et. al., Petitioners v. Sounboon Srimeuangsam, Respondent,*
No. 00-750,
Respondent's Response to Petition for *Certiorari* and Motion for Leave to Proceed *In Forma Pauperis*

Dear Mr. Suter:

Enclosed please find an original and ten copies of Response by Respondent to Petition for a Writ of *Certiorari* along with an original and ten copies of Respondent's Motion to Proceed *In Forma Pauperis* and Certificate of Service by mail for both documents for filing in the above-cited case.

Very truly yours,

Thomas W. Hillier, II
Federal Public Defender for the Western District of Washington

Jay W. Stansell
Assistant Federal Public Defender

Jennifer E. Wellman
Assistant Federal Public Defender
Counsel of Record

Attorneys for Sounboon Srimeuangsam

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SUPREME COURT, U.S.

cc: Seth Waxman, Solicitor General
Enclosures (as stated)

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